

1 BILL NO. S-82-12- 05

2 SPECIAL ORDINANCE NO. S- 234-82

3 AN ORDINANCE approving Street Improvement
4 Resolution No. 5952-82, Resurfacing in
5 Third Councilmanic District, with Brooks
6 Construction Company, Inc., in connection
7 with the Board of Public Works.

8 BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF
9 FORT WAYNE, INDIANA:

10 SECTION 1. That a certain Contract dated October 27,
11 1982, between the City of Fort Wayne, Indiana, by and through
12 its Mayor and the Board of Public Works and Brooks Construction
13 Company, Inc., for:

14 the resurfacing and restoration of pavement
15 on the following streets: North Highlands
16 Boulevard; Cherokee Road; Hinton Drive; Wells
17 Street; Florence Avenue; St. Mary's Avenue;
18 Franklin Avenue; Strand Road; Jessie Avenue;
19 Tennessee Avenue; Sherman Boulevard; Eastbrook
20 Drive; Fairhill Road; Schilling Avenue; and
21 Lindenwood Avenue;

22 under Board of Public Works Street Improvement Resolution No.
23 5952-82, involving a total cost of Three Hundred Six Thousand
24 Four Hundred Seventy-Four and 50/100 Dollars (\$306,474.50),
25 all as more particularly set forth in said Resolution and
26 Contract, and which is on file with the Office of the Board of
27 Public Works and is by reference incorporated herein, made a
28 part hereof, and is hereby in all things ratified, confirmed
29 and approved. Two copies of said Contract are on file with
30 the Office of the City Clerk and made available for public
31 inspection, according to law.

32 SECTION 2. That this Ordinance shall be in full force
and effect from and after its passage, and any and all necessary
approval by the Mayor.


Councilmember

1 Page Two

2
3 APPROVED AS TO FORM
4 AND LEGALITY

5 
6 Bruce O. Boxberger, City Attorney

Read the first time in full and on motion by Stier,
seconded by Bradbury, and duly adopted, read the second time
by title and referred to the Committee Public Works (and the City
Plan Commission for recommendation) and Public Hearing to be held after
due legal notice, at the Council Chambers, City-County Building, Fort Wayne,
Indiana, on _____, the _____ day of _____,
19____, at _____ o'clock _____ M., E.S.T.

DATE: 12-14-82

Charles W. Westerman
CHARLES W. WESTERMAN - CITY CLERK

Read the third time in full and on motion by Stier,
seconded by Bradbury, and duly adopted, placed on its
passage. PASSED (lost) by the following vote:

	<u>AYES</u>	<u>NAYS</u>	<u>ABSTAINED</u>	<u>ABSENT</u>	<u>TO-WIT:</u>
<u>TOTAL VOTES</u>	<u>9</u>	<u>0</u>	_____	_____	_____
<u>BRADBURY</u>	<u>X</u>	_____	_____	_____	_____
<u>BURNS</u>	<u>X</u>	_____	_____	_____	_____
<u>EISBART</u>	<u>X</u>	_____	_____	_____	_____
<u>GIAQUINTA</u>	<u>X</u>	_____	_____	_____	_____
<u>SCHMIDT</u>	<u>X</u>	_____	_____	_____	_____
<u>SCHOMBURG</u>	<u>X</u>	_____	_____	_____	_____
<u>SCRUGGS</u>	<u>X</u>	_____	_____	_____	_____
<u>STIER</u>	<u>X</u>	_____	_____	_____	_____
<u>TALARICO</u>	<u>X</u>	_____	_____	_____	_____

DATE: 12-28-82

Charles W. Westerman
CHARLES W. WESTERMAN - CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne,
Indiana, as (~~ZONING MAP~~) (~~GENERAL~~) (~~ANNEXATION~~) (~~SPECIAL~~)

(~~APPROPRIATION~~) ORDINANCE (RESOLUTION) NO. 2-234-82

on the 29th day of December, 1982.

ATTEST:

(SEAL)

Charles W. Westerman
CHARLES W. WESTERMAN - CITY CLERK

Samuel J. Talarico
PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on
the 29th day of December, 1982, at the hour of
11:30 o'clock PM, E.S.T.

Charles W. Westerman
CHARLES W. WESTERMAN - CITY CLERK

Approved and signed by me this 3rd day of January
1983, at the hour of 12:30 o'clock P.M., E.S.T.

Win Moses, Jr.
WIN MOSES, JR. - MAYOR

*Pass
appear*

BILL NO. S-82-12-05

REPORT OF THE COMMITTEE ON PUBLIC WORKS

WE, YOUR COMMITTEE ON Public Works TO WHOM WAS REFERRED AN
ORDINANCE approving Street Improvement Resolution No. 5952-82;
Resurfacing in the Third Councilmanic District, with Brooks Construction
Company, Inc., in connection with the Board of Public Works

HAVE HAD SAID ORDINANCE UNDER CONSIDERATION AND BEG LEAVE TO REPORT
BACK TO THE COMMON COUNCIL THAT SAID ORDINANCE Do PASS.

JAMES S. STIER, CHAIRMAN

BEN A. EISBART, VICE CHAIRMAN

VICTURE L. SCRUGGS

MARK E. GIAQUINTA

DONALD J. SCHMIDT

James S. Stier
Ben A. Eisbart
Victure L. Scruggs
Mark E. Giaquinta
Donald J. Schmidt

12-28-82
DATE 12-28-82 CONCURRED IN
CHARLES W. WESTERMAN, CITY CLERK

CONTRACT

72-186-23
10/27/82

This Agreement, made and entered into this 27 day of October, 1982

by and between ----- BROOKS CONSTRUCTION COMPANY, INC. -----

----- 1123 BARTHOLD STREET, FORT WAYNE, INDIANA 46898 -----

hereinafter called "Contractor" and the City of Fort Wayne, Indiana, a municipal corporation, hereinafter called "City," under and by virtue of an act of the General Assembly of the State of Indiana, entitled "An Act Concerning Municipal Corporations," approved March 6, 1905, and all amendatory and supplementary acts thereto, WITNESSETH: That the Contractor covenants and agrees to improve

3rd Councilmanic District - 1982 Resurfacing (Bond Issue)

See attached Improvement Resolution for detailed list of streets and limits.

by grading and paving the roadway to a width of XXX feet with

upon a foundation and with curbing as fully set out in the specifications hereinafter referred to, in a good and workmanlike manner and to the entire satisfaction of said City, in accordance with Improvement Resolution No. 5952-82 attached hereto and by reference made part hereof.

At the following prices:

Pavement Removal	One dollar and no cents per square yard	1.00
H.A.C. #9 Binder	Nineteen dollars and seventy-five cents per ton	19.75
H.A.C. #11 Binder	Twenty-four dollars and eighty cents per ton	24.80
H.A.C. A-2 Surface	Twenty-seven dollars and no cents per ton	27.00
Joint & Crack Sealer	Five hundred and fifty dollars and no cents per ton	550.00
Catch Basins - Adjust & Set to Grade	One hundred and fifteen dollars and no cents per each	115.00
Inlets - Adjust & Set to Grade	One hundred and fifteen dollars and no cents per each	115.00
Manholes - Adjust & Set to Grade	One hundred and fifteen dollars and no cents per each	115.00
Water Valves - Adjust & Set to Grade	Fifty dollars and no cents per each	50.00
Standard C.B.'s (Complete In Place)	One thousand dollars and no cents per each	1,000.00

The Contractor hereby expressly agrees to perform all the work in the prosecution of the above described improvement according to the terms and conditions of Improvement Resolution No. 5952-82 the plans, profiles, specifications and the contractor's bid therefor on file in the office of the Department of Public Works of said City, which said resolution, profile, plans and specifications are made a part of this contract as fully and effectually as if copied herein at full length, (copies of which are attached hereto).

It is hereby agreed that no assignment of this contract shall be made without the written consent of the City; said Contractor hereby covenants and agrees that said improvement shall be finally

*** See Liquidated Damages Provision ***
and in all respects completed on or before , 19 and the Contractor agrees to pay and

give to the City, as liquidated damages, the sum of \$25.00 for each and every day after said

 , 19 until said work is finally completed and ready for acceptance by the City.

It being also understood that in event of any conflict between this contract and the specifications, that the former shall be considered to contain the intention of the parties hereto.

It is further agreed by and between said parties, that the acceptance of the work provided for in this contract, or the payment therefor, for the whole or a part, shall not constitute a waiver on the part of the City of any of the provisions of the contract, nor shall it release said Contractor, or the sureties upon its bond for the faithful performance thereof, nor shall the acceptance be even prima facie evidence of the performance of any provisions of such contract except to the extent of entitling said Contractor to receive the price therefor. It is further understood that the failure of the City to exercise its right of inspection or rejection of material and work, or the exercise of such right shall not in any sense be considered an acceptance of any part of said work or material.

The Contractor further contracts and agrees that in the prosecution of said work all proper skill and care will be exercised, that said party will properly and fully guard all excavations and dangerous places, and will use all due and proper precautions to prevent injury to any property, person and persons, what or whomsoever. That for and during the period of the making of such improvement, and the period for which the same is to be maintained and kept in repair by the Contractor, the City shall be saved harmless from any and all liability whatsoever growing out of any injury or damage to property or persons because of any neglect or fault of the said Contractor, its agents or employees, in the execution of this contract or any matter connected therewith or related thereto and to pay any judgment with costs which may be obtained against said City, growing out of any such injury or damage.

To each of the conditions and stipulations in this contract, the undersigned bind themselves, their successors and assigns.

IN WITNESS WHEREOF, we the foregoing named parties hereunto set our hands this 27

day of October, 1982

ATTEST:

[Signature]
Corporate Secretary

BROOKS CONSTRUCTION COMPANY, INC.

BY: [Signature]

ITS: Chairman of Board

Contractor, Party of the First Part.

City of Fort Wayne, By and Through:

ATTEST:

[Signature]
Secretary and Clerk

Its Board of Public Works and Mayor.

[Signature]
ASSOCIATE CITY ATTORNEY

#53 Stone (Rolled & Compacted)	Three dollars and forty cents per ton	3.40
A-E 150 (Shoulders)	Two hundred and thirty dollars and no cents per ton	230.00
H.A.C. #53 Base	Eighteen dollars and no cents per ton	18.00
Standard Inlets (Complete In Place)	Seven hundred dollars and no cents per each	700.00
Standard Manhole (Complete In Place)	Twelve hundred dollars and no cents per each	1,200.00
12" R.C.P. (In Place)	Twelve dollars and no cents per lineal foot	12.00
Blue Grass Sod	Three dollars and no cents per square yard	3.00
Topsoil	Eight dollars and no cents per ton	8.00
6" Sidewalk	Three dollars and no cents per square foot	3.00
Curb (Type I-B)	Seven dollars and fifty cents per lineal foot	7.50
6" Concrete Drive Approach	Twenty-five dollars and no cents per square yard	25.00
Sub Total	Two hundred and fifty-five thousand, two hundred and eighty-eight dollars and ninety cents	255,288.90
ALTERNATE		
Pavement Removal	One dollar and no cents per square yard	1.00
H.A.C. #9 Binder	Twenty dollars and no cents per ton	20.00
H.A.C. #11 Binder	Twenty-four dollars and thirty cents per ton	24.30
A-2 Surface	Twenty-seven dollars and thirty cents per ton	27.30
Joint & Crack Sealer	Five hundred and fifty dollars and no cents per ton	550.00
Water Valves - Adjust & Set to Grade	Fifty dollars and no cents per each	50.00

Catch Basins - Adjust & Set to Grade	One hundred and fifteen dollars and no cents per each	115.00
Manholes - Adjust & Set to Grade	One hundred and fifteen dollars and no cents per each	115.00
Standard C.B.'s (Complete In Place)	One thousand dollars and no cents per each	1,000.00
DuPont Reepay Fabric	No dollars and ninety-three cents per square yard	0.93
Sub Total	Fifty-one thousand, one hundred and eighty-five dollars and sixty cents	51,185.60
Total	Three hundred and six thousand, four hundred and seventy-four dollars and fifty cents	\$306,474.50

The Contractor will furnish immediately a certificate from the Industrial Board of the State of Indiana that he has complied with Sections 5, 68, 69 of the Workmen's Compensation Act, approved March 14, 1929, in accordance with Section 14 of the Compensation Act (Acts 1929, page 545, being I.C. 22-3-2-1 et. seq.).

A copy of General Ordinance No. G-34-78 (as amended) concerning discriminating in employment under municipal contracts, is attached and incorporated herein by reference.

PERFORMANCE AND GUARANTEE BOND

KNOW ALL MEN BY THESE PRESENTS, that we BROOKS CONSTRUCTION COMPANY, INC.
as Principal, and the American States Insurance Company

, a corporation organized under the laws of the
State of Indiana, and duly authorized to transact business in the
State of Indiana, as Surety, are held firmly bound unto the City of Fort Wayne,
Indiana, an Indiana Municipal Corporation in the sum of THREE HUNDRED AND SIX
THOUSAND, FOUR HUNDRED AND SEVENTY-FOUR DOLLARS AND FIFTY CENTS-----

(\$306,474.50-----), for the payment whereof well and truly to be made,
the Principal and Surety bind themselves, their heirs, executors, administrators,
successors and assigns, jointly and severally, firmly by these presents. The
condition of the above obligation is such that

WHEREAS, the Principal did on the 27 day of October
enter into a contract with the City of Fort Wayne to construct
Improvement Resolution No. 5952-82

To improve the 3rd Councilmanic District - 1982 Resurfacing (Bond Issue).

See attached Improvement Resolution for detailed list of streets and limits.



at a cost of \$306,474.50-----, according to certain plans and specifications
prepared by or approved by the City.

WHEREAS, the grant of authority by City to so construct such improvement
provides:

1. That said improvement shall be completed according to said plans and specifications, and contractor shall warrant and guarantee all work, material, and conditions of the improvement for a period of three (3) years from the date of final acceptance in writing by the Owner;
2. There shall be filed with the City, within thirty (30) days after completion, a Completion Affidavit;
3. Said Principal is required to agree to make such adjustments, modifications, and repairs as required by the City within thirty (30) days after notice.



WHEREAS, said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the contract or to the work to be performed thereunder, or the specifications accompanying the same, shall in any way affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract, or to the work or to the specifications.

NOW THEREFORE, if the principal shall faithfully perform all of the terms and conditions required of it by the contract and shall for three (3) years after acceptance of said improvement by City warrant and guarantee said improvement and shall indemnify the City for all loss that City may sustain by reason of the Principal's failure to comply with any of the terms of the authorization, then this obligation shall be void, otherwise it shall remain in full force and effect.

BROOKS CONSTRUCTION COMPANY, INC.

(Contractor)

BY: James F. Brooks

ITS: Chairman of Board

ATTEST:

John E. Jones
(Title) Corp Sec.

American States Insurance
Surety

*BY: W. Richard Berger
Authorized Agent
(Attorney-in-Fact)

*If signed by an agent, power of attorney must be attached

American States Insurance Company

INDIANAPOLIS, INDIANA

KNOW ALL MEN BY THESE PRESENTS, that American States Insurance Company, a Corporation duly organized and existing under the laws of the State of Indiana, and having its principal office in the City of Indianapolis, Indiana, hath made, constituted and appointed, and does by these presents make, constitute and appoint _____

----- N. RICHARD BOERGER -----

of Ft. Wayne and State of Indiana
and its true and lawful Attorney(s)-in-Fact, with full power and authority hereby conferred in its name, place and stead, to execute, acknowledge and deliver any and all bonds, recognizances, contracts of indemnity and other conditional or obligatory undertakings,

in connection with a bond for Brooks Construction Company, Inc. in the penal sum of

SIX MILLION AND NO/100 (\$6,000,000.00) DOLLARS -----

and to bind the Corporation thereby as fully and to the same extent as if such bonds were signed by the President, sealed with the common seal of the Corporation and duly attested by its Secretary, hereby ratifying and confirming all that the said Attorney(s)-in-Fact may do in the premises. This Power of Attorney is executed and may be revoked pursuant to and by authority granted by Section 7.07 of the By-Laws of the American States Insurance Company, which reads as follows:

"The Chairman of the Board, the President or any Vice-President shall have power, by and with the concurrence with the Secretary or any Assistant Secretary of the Corporation, to appoint Resident Vice-Presidents, Resident Assistant Secretaries and Attorneys-in-Fact as the business of the Corporation may require or to authorize any one of such persons to execute, on behalf of the Corporation, any bonds, recognizances, stipulations and undertakings, whether by way of surety or otherwise"

IN WITNESS WHEREOF, American States Insurance Company has caused these presents to be signed by its Vice-President,

attested by its Assistant Secretary and its corporate seal to be hereto affixed this 16th day of August

A. D. 19 78

(SEAL)

AMERICAN STATES INSURANCE COMPANY

By William M. Evans
Second Vice-President

ATTEST: Thomas M. Ober
Assistant Secretary

STATE OF INDIANA }
COUNTY OF MARION } SS:

On this 16th day of August, A. D., 19 78 before me personally came

William M. Evans

, to me known, who being by me duly sworn, acknowledged the execution of the above instrument and did depose and say; that he is Vice-President of American States Insurance Company; that he knows the seal of said Corporation; that the seal affixed to the said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said Corporation; and that he signed his name

thereto by like order. And said William M. Evans further said that he is acquainted with Thomas M. Ober and knows him to be the Assistant Secretary of said Corporation; and that he executed the above instrument.

January 10, 1981
My Commission Expires

Linda J. Cannon
Notary Public

STATE OF INDIANA }
COUNTY OF MARION } SS:

I, Thomas M. Ober

_____, the Assistant Secretary of AMERICAN STATES INSURANCE COMPANY, do hereby certify that the above and foregoing is a true and correct copy of a Power of Attorney, executed by said AMERICAN STATES INSURANCE COMPANY, which is still in full force and effect.

1.1 This Certificate may be signed and sealed by facsimile under and by the authority of the following resolution of the Board of Directors of American States Insurance Company at a meeting duly called and held on the 15th day of December 1972.

"RESOLVED: That the use of a printed facsimile of the corporate seal of the company and of the signature of an Assistant Secretary on any certification of the correctness of a copy of an instrument executed by the President or a Vice-President pursuant to Section 7.07 of the By-Laws appointing and authorizing an Attorney-in-Fact to sign in the name and on behalf of the company surety bonds, underwriting undertakings or other instruments described in said Section 7.07, with like effect as if such seal and such signature had been manually affixed and made, hereby is authorized and approved."

In witness whereof, I have hereunto set my hand and affixed the seal of said Corporation, this 14th

day of October, A. D., 19 80

(SEAL)

Form 9-1459 (12-72)

Thomas M. Ober
Assistant Secretary

at a cost of THREE HUNDRED AND SIX THOUSAND, FOUR HUNDRED AND SEVENTY-FOUR DOLLARS AND FIFTY CENTS

(\$ 306,474.50), all according to Fort Wayne Street Engineering Department plans and specifications.

WHEREAS, said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the contract or to the work to be performed thereunder, or the specifications accompanying the same, shall in any way affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract, or to the work or to the specifications, and

WHEREAS, no final settlement between the Owner and the Contractor shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

NOW, THEREFORE, if the Principal shall promptly make payment to all persons, firms, subcontractors, and corporations furnishing materials for or performing labor in the prosecution of the work provided for in such contract, and any authorized extension or modification thereof, including all amounts due for materials, lubricants, oil, gasoline, coal and coke, repairs on machinery, equipment and tools, consumed or used in connection with the construction of such work, and all insurance premiums on said work, and for all labor, performed in such work whether by subcontractor or otherwise, then this obligation shall be void; otherwise to remain in full force and effect.

IN WITNESS WHEREOF, this instrument is executed in 3 (number) counterparts, each one of which shall be deemed an original, this 27 day of October, 19 82.

(SEAL)

ATTEST:

[Signature]
(Principal) Secretary

Danna M. Allen
Witness as to Principal

3126 Trenton Court
(Address)

St Wayne, Indiana 46108

Joyce A. Spittle
Witness as to Surety

356 W. Bryan St.
(Address)

Berne, Ind. 46711

BROOKS CONSTRUCTION COMPANY, INC.

Principal

BY [Signature]
Chairman of Board
(Title)

1123 Barkhols St
(Address)
St Wayne, Ind.

American States Insurance Co
Surety

BY [Signature]
Attorney-in-Fact
(Authorized Agent)

American States Insurance
Indianapolis, Indiana
(Address)

NOTE: Date of Bond must not be prior to date of Contract.
If Contractor is Partnership, all partners should execute bond.

TITLE OF ORDINANCE Street Improvement Res. #5952-82, Resurfacing in 3rd Councilmanic District

DEPARTMENT REQUESTING ORDINANCE Board of Public Works

S-82-12-05

SYNOPSIS OF ORDINANCE Street Improvement Res. #5952-82, Resurfacing in 3rd Councilmanic District

District to improve by resurfacing and restoring pavement as designated

on the following streets to be known as: 1) North Highlands Blvd. 2) Cherokee Rd.

3) Hinton Drive 4) Wells St. 5) Florence Ave. 6) St. Marys Ave. 7) Franklin Ave.

8) Strand Rd. 9) Jessie Ave. 10) Tennessee Ave. 11) Sherman Blvd. 12) Eastbrook Dr.

13) Fairhill Rd. 14) Schilling Ave. 15) Lindenwood Ave. Contract awarded to

Brooks Construction Company, Inc., the low bidder.

Prior approval received on September 14, 1982.

EFFECT OF PASSAGE Improvement of 3rd Councilmanic District.

EFFECT OF NON-PASSAGE

MONEY INVOLVED (DIRECT COSTS, EXPENDITURE, SAVINGS) \$306,474.50

ASSIGNED TO COMMITTEE